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The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board

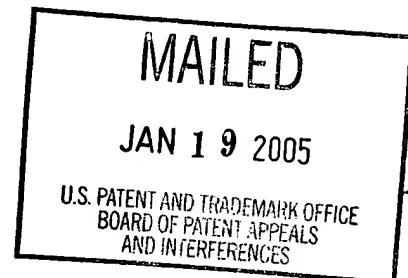
Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY S. HUFF

Appeal No. 2004-0959
Application 09/915,743



ON BRIEF

Before THOMAS, OWENS, and LEVY, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1-5, 21, 22 and 30-140, which are all of the claims pending in the application.

THE INVENTION

The appellant claims a method and system for establishing a link between network devices. Claim 1, which claims the method, is illustrative:

1. A method for establishing a link between network devices comprising the steps of:

a first network device transmitting a first message advertising a first set of capabilities to a second network device;

the first network device negotiating with the second network device to determine a first link speed based upon the first set of capabilities;

- the first network device attempting to establish a link at the first link speed with the second network device;
- the first network device failing to establish a link at the first link speed with the second network device;
- the first network device downgrading the first set of capabilities to a second set of capabilities, wherein the second set of capabilities does not include the first link speed;
- the first network device transmitting a second message advertising the second set of capabilities to the second network device;
- the first network device negotiating with the second network device to determine a second link speed that is less than the first link speed;
- the first network device and the second network device establishing a link at the second link speed; and
- the first network device transmitting data to the second network device via the link at the second link speed.

THE REFERENCES

Cochennec	4,417,333	Nov. 22, 1983
Crayford	5,432,775	Jul. 11, 1995
Mills	5,991,303	Nov. 23, 1999
Wakeley et al. (Wakeley)	6,198,727	Mar. 6, 2001
Feuerstraeter et al. (Feuerstraeter) (filed Sep. 10, 1997)	6,285,659	Sep. 4, 2001

IEEE Standard 802.3u-1995

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as follows: claims 1, 3, 21, 22, 30-33, 38-41, 63-66, 70-74, 81-84, 87, 88, 90, 94, 96-99, 104-108, 129, 131, 135 and 137 over Feuerstraeter in view of Cochennec; claims 2, 34, 35, 43, 44, 46, 67, 68, 76, 77, 79, 85, 86, 91, 92, 100, 101, 109, 110, 112, 130 and 136 over Feuerstraeter in view of Cochennec and

Mills; claims 4 and 5 over Feuerstraeter in view of Cochennec and Wakeley; claims 36, 37, 69, 102 and 103 over Feuerstraeter in view of Cochennec and IEEE 802.3u-1995; claims 42, 75, 89 and 95 over Feuerstraeter in view of Cochennec and Crayford; claims 45, 47, 78, 80, 93, 111 and 113 over Feuerstraeter in view of Cochennec, Mills and Crayford; claims 48-51, 54, 55, 57, 61, 114-117, 120, 121, 123, 127, 132, 134, 138 and 140 over Feuerstraeter in view of Cochennec and IEEE 802.3u-1995; claims 52, 53, 58, 59, 118, 119, 124, 125, 133 and 139 over Feuerstraeter in view of Cochennec, IEEE 802.3u-1995 and Mills; claims 56, 62, 122 and 128 over Feuerstraeter in view of Cochennec, IEEE 802.3u-1995 and Crayford; and claims 60 and 126 over Feuerstraeter in view of Cochennec, IEEE 802.3u-1995, Mills and Crayford.

OPINION

We affirm the aforementioned rejections.

The appellant states that “[c]laims 1-5, 21-22 and 30-140 (all pending claims) may be grouped for argument with respect to all 35 U.S.C. § 103(a) rejections” (brief, page 4). Although references in addition to Feuerstraeter and Cochennec are applied to some independent and dependent claims, the appellant does not argue that the additional limitations in those claims render those claims separately patentable. Hence, we limit our discussion to the issue argued by the appellant (which is common to all claims), i.e., whether Feuerstraeter and Cochennec disclose or would have fairly suggested, to one of ordinary skill in the art, attempting and failing to establish a link. See *In re Burckel*, 592 F.2d 1175, 1178-79, 201 USPQ 67, 70 (CCPA 1979); *In re Herbert*, 461 F.2d 1390, 1391, 174 USPQ 259, 260 (CCPA 1972); 37 CFR § 1.192(c)(7)(1997).

Feuerstraeter discloses an autonegotiation system and method wherein, at 10 Mbps using fast link pulses, devices advertise their communicating ability (col. 6, lines 30-33). Negotiation logic selects the highest rate protocol which the devices are capable of supporting (col. 9, lines 20-21). After a protocol is selected, the devices may interexchange data (col. 9, lines 46-48). Error detection logic monitors transmitted and received data for errors which may be caused by, for example, substandard voltage amplitude, missing carrier signal, such as clock, or erroneous frame check sequence (col. 8, lines 29-34).¹ If the error count exceeds a threshold value, the devices renegotiate a lower transmission rate protocol (abstract; col. 8, lines 48-55; col. 9, lines 56-61). Then data may again be exchanged among the devices (col. 9, lines 61-63).

The appellant argues that Feuerstraeter discloses establishing a link and then detecting errors in the transmitted data, whereas the appellant attempts and fails to establish a link (brief, pages 5-6). The appellant argues that if a link is established it services a data communication, whereas if a link is not established it cannot support a data communication (brief, page 7).

During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification, as the claim language would have been read by one of ordinary skill in the art in view of the specification and prior art. See *In re Zletz*,

¹ Similarly, Cochennec discloses that a failure at a high bit rate can be caused by the absence of the clock, an excessive error rate or a loss of locking (col. 5, lines 18-22).

893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983); *In re Herz*, 537 F.2d 549, 551, 190 USPQ 461, 463 (CCPA 1976); *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976).

Limitations, however, are not to be read from the specification into the claims. See *In re Prater*, 415 F.2d 1393, 1405, 162 USPQ 541, 551 (CCPA 1969).

The appellant's specification discloses (page 4, lines 10-16):

A first device communicates a set of capabilities to a second device (i.e. a link partner). If the second device supports this set of capabilities, a connection is attempted according to this set of capabilities and, if successful, the two link partners communicate according to this set of capabilities.

However, if the link cannot be established according to this set of capabilities, the first device downgrades its set of capabilities and communicates this downgraded set of capabilities to the second device.

The specification does not specify what is meant by "a connection is attempted".

Because the set of capabilities is supported by both devices, it reasonably appears that "a connection is attempted" means that the devices attempt to communicate at that set of capabilities. If that attempt fails, then the devices downgrade the set of capabilities. Hence, the broadest reasonable interpretation in view of the specification of "failing to establish a link" and comparable terms in the appellant's claims includes failing to obtain adequate communication at a set of capabilities. That interpretation is consistent not only with the appellant's specification, but also with the prior art (Feuerstraeter, col. 6, line 30 - col. 7, line 5; col. 8, lines 24-55; col. 9, lines 40-63).

The appellant's specification does not specify why the attempt to communicate fails at the higher set of capabilities. Because the higher set of capabilities is supported by both

devices, it reasonably appears that the failure can be due to an unacceptably high error rate during communication at that set of capabilities as in Feuerstraeter's system. Hence, we are not convinced of reversible error in the examiner's rejection.

DECISION

The rejections under 35 U.S.C. § 103 of claims 1, 3, 21, 22, 30-33, 38-41, 63-66, 70-74, 81-84, 87, 88, 90, 94, 96-99, 104-108, 129, 131, 135 and 137 over Feuerstraeter in view of Cochennec, claims 2, 34, 35, 43, 44, 46, 67, 68, 76, 77, 79, 85, 86, 91, 92, 100, 101, 109, 110, 112, 130 and 136 over Feuerstraeter in view of Cochennec and Mills, claims 4 and 5 over Feuerstraeter in view of Cochennec and Wakeley, claims 36, 37, 69, 102 and 103 over Feuerstraeter in view of Cochennec and IEEE 802.3u-1995, claims 42, 75, 89 and 95 over Feuerstraeter in view of Cochennec and Crayford, claims 45, 47, 78, 80, 93, 111 and 113 over Feuerstraeter in view of Cochennec, Mills and Crayford, claims 48-51, 54, 55, 57, 61, 114-117, 120, 121, 123, 127, 132, 134, 138 and 140 over Feuerstraeter in view of Cochennec and IEEE 802.3u-1995, claims 52, 53, 58, 59, 118, 119, 124, 125, 133 and 139 over Feuerstraeter in view of Cochennec, IEEE 802.3u-1995 and Mills, claims 56, 62, 122 and 128 over Feuerstraeter in view of Cochennec, IEEE 802.3u-1995 and Crayford, and claims 60 and 126 over Feuerstraeter in view of Cochennec, IEEE 802.3u-1995, Mills and Crayford, are affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective September 13, 2003; 69 Fed Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat., Office 21 (September 7, 2004)).

AFFIRMED

[Handwritten signatures of James D. Thomas, Terry J. Owens, and Stuart S. Levy are present above their typed names.]

James D. Thomas)
Administrative Patent Judge)
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Terry J. Owens) APPEALS AND
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